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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

DAVID S.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G057324

(Super. Ct. No. 17DP1007)

O P I N I O N

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Katherine E. Lewis, Judge. Petition denied.

Office of the Juvenile Defenders, Donna Chirco and Martha Franco for
Petitioner.

Leon J. Page, County Counsel, Karen L. Christensen and Deborah B.
Morse, Deputies County Counsel, for Real Party in Interest Orange County Services
Agency.

Law Office of Harold LaFlamme and Camden Polischuk for the Minor.

* * *

I. INTRODUCTION

Petitioner David S. is the biological father of dependent infant Sophia S. The reunification services plan ordered for David at the beginning of 2018 required drug rehabilitation and testing. But before the 12-month review, David was deported to his native India. Social workers attempted to ascertain whether such rehabilitation and testing services could be made available to him there, but David himself assured them in no uncertain terms that such services do not exist in his country. We affirm the trial court's finding at the 12-month review that reasonable services were offered to David and its concomitant order terminating reunification services.

II. BACKGROUND

Sophia S. was born in mid-September 2017, exhibiting heroin withdrawal symptoms. She was put into neonatal intensive care, requiring morphine every three hours. Her mother, Julie E., admitted to using heroin, methamphetamine, and Suboxone while pregnant.

About the same time, David was arrested on charges of petty theft and possession of drug paraphernalia. His criminal history up to then included arrests for possession of controlled substances in December 2016, in June 2017, and again in July 2017. At the time of Sophia's birth David was expecting arraignment late October 2017. He was released on September 29, 2017, the same day social workers placed Sophia in a licensed foster home.

David pled guilty to the charges attendant on his most recent arrest on October 17, 2017, and was sentenced to 60 days in jail. He was released sometime prior to November, but was immediately picked up by federal Immigration and Customs Enforcement (ICE) officers. He was put back into the county jail on an immigration hold.

Julie had been married to a Nicholas E. at the time of Sophia's birth, so it was not until January 2, 2018 that paternity tests established David was Sophia's biological father. Dependency jurisdiction was established over Sophia the next day. David was given a reunification plan that contemplated completion of a substance abuse treatment program, drug testing, and attendance at a 12-step program. The plan also envisioned David beginning parenting classes on his release from custody, and he was given one hour of weekly visitation, which entailed Sophia's caregivers bringing her to the county jail and a social worker monitoring the visitation.

David had regular visits from Sophia via her caregivers and a social worker from January 11 to mid-February, and then again from April 17 to August 30. The hiatus was due to the jail barring the social worker (and Sophia) on February 22, because the sergeant had no record of David's incarceration. David was in fact still incarcerated, but because of the immigration hold he had a new identification number, known as an "A number," used by ICE. Not until April 17 did social workers figure out the nature of the problem and resume visits. The new visitation referral provided for 12 weeks of make-up visitation in light of the numbering snafu.

David's last visit with Sophia was on August 30, 2018. A week later, on September 6, 2018, he was deported to India.

The assigned social worker tried to contact the Indian consulate in San Francisco to arrange reunification services for David in India. She discovered the San Francisco consulate has a practice of not answering its public phone line – a caller is told to leave a message and receive a call back.

The social worker never got a call back from the San Francisco consulate. She was, however, able to establish phone contact with David at his new location in Punjab.¹ When she spoke with him on November 13, it was 10 a.m. in California; it was midnight in Punjab.

In that conversation, the social worker learned that it was actually an official at the San Francisco consulate itself who had initiated David's deportation. David also told her, quite forcefully, that there were no reunification services at all available to him, particularly services geared toward drug rehabilitation.² He told the social worker there was no way he could work on his reunification plan in India. And he confided his "only hope" of actual reunification with Sophia was "to illegally enter the United States through the Mexican border." The social worker told him he could be incarcerated and deported for doing so.³

Despite the absence of services in India, Sophia's caregivers were able to arrange video chats between David and Sophia in the period November through mid-December 2018. David himself discontinued those video chats in December owing to the poor quality of WiFi in his area causing the screen to freeze up.

The juvenile court held a combined 6- and 12-month review on January 29, 2019. David's lawyer argued the social worker should have tried harder to establish contact with an Indian consulate – if not the one in San Francisco then maybe the ones in Washington D.C. or New York. Counsel also pointed out that David had attended 12-step meetings during his pre-deportation stay in county jail and had worked on "parenting packets" sent by social workers.

¹ Social workers often have their commitment challenged. This one tracked down a deported drug user in India. We are impressed, even if David's counsel were not.

² David's exact words to the social worker were: "India is a Bribe Country. India is a Fucked up Country, India is a bull shit Country. There's 2.5 million [*sic*] people living in India and there's no rehab." He further told the social worker that India "is more worried about feeding their children three meals a day and not worried about sending their people to rehab."

³ 8 U.S.C. section 1326 provides for a fine or imprisonment for not more than two years for deportees who, absent certain exceptions inapplicable to David's situation, attempt to reenter the United States.

At the review hearing the court terminated services for both parents and set a date in late May 2019 for a permanency hearing. While Julie has not challenged the order, David brought this proceeding for a writ of mandate seeking to vacate the trial court's order.

III. DISCUSSION

David's argument is simple. He asserts there was insufficient effort on the part of social workers to identify available services in India as required by Welfare and Institutions Code section 361.5, subd. (e)(1)(E).⁴ It is a riff on the earlier argument made to the trial court: The social worker should have tried harder to find services for David in India, including contacting the Indian consulates in New York or Washington, D.C. His brief likewise posits the social worker should have tried to "contact a hospital or other government agency" to find out if India "has any type of system in place."

It is true, course, that some countries to which parents of dependent children are deported *do* provide reunification services. Mexico operates the *Sistema Nacional para el Desarrollo Integral de la Familia*, known as the DIF. (See *In re A.G.* (2017) 12 Cal.App.5th 994, 998) The DIF can, for example, facilitate supervised visitation at the international border. (*Id.* at p. 999.)

On review, we must indulge all reasonable inferences to uphold the court's order. (See *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1361-1362.) Unfortunately for David, as far as our record is concerned, the reasonable inference is that India is not like

⁴ In pertinent part, the statute reads: "If the parent or guardian . . . has been deported to his or her country of origin, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. . . . In determining the content of reasonable services, the court shall consider the particular barriers to . . . [a] deported parent's access to those court-mandated services and ability to maintain contact with his or her child, and shall document this information in the child's case plan. Reunification services are subject to the applicable time limitations imposed in subdivision (a). Services may include, but shall not be limited to, all of the following: [¶] . . . [¶] (E) Reasonable efforts to assist parents who have been deported to contact child welfare authorities in their country of origin, to identify any available services that would substantially comply with case plan requirements, to document the parents' participation in those services, and to accept reports from local child welfare authorities as to the parents' living situation, progress, and participation in services."

All further statutory references are to the Welfare and Institutions Code.

Mexico in this regard. Tellingly, not even his counsel on appeal asks for judicial notice of any existing child welfare agencies operated by the Republic of India or the State Government of Punjab. The only evidence before us concerning services for citizens of India is David's own: There are no services to treat the main reason for Sophia's dependency – illegal drug use.

We further note the text of section 361.5, subdivision (e)(1)(E) envisions much more than mere private drug rehab. Subdivision (e)(1)(E) contemplates helping parents contact "child welfare authorities," which will provide reports "as to the parents' living situation, progress, and participation in services." That is a long way from merely finding a private drug rehabilitation clinic, and we have nothing before us to indicate any such agencies operate anywhere near David's residence in Punjab.⁵

Reasonable services are evaluated in light of all the facts and circumstances of the case. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416.) In light of David's emphatic statement he could find no services in India himself, it is hard to charge social workers here with not doing enough after his deportation. After deportation they did the logical thing: they contacted the regional Indian consulate. Not wasting valuable hours trying to overcome the consulate's lack of response is hardly unreasonable given that an official in that very consulate initiated David's deportation. The social workers here were diligent in providing services.

⁵ For sake of argument, it is of course possible that *private* drug rehabilitation services might be available somewhere in the Punjab, but there is no indication in this record that such services can fulfill the monitoring requirements found in section 361.5, subdivision (e)(1)(E).

IV. DISPOSITION

The order is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.